IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1160 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FACTORY MANAGER

Versus

NEHRU RAMLAKHAN

Appearance:

MR KN RAVAL for Petitioners

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/04/2000

ORAL JUDGEMENT

Learned advocate Mrs. P.J.Dawawala appearing on behalf of petitioner and Learned Advocate Mr. A.K.Clerk appearing on behalf of respondent. Heard the Learned Advocates.

The brief facts of the present petition is that respondent workman was dismissed from service on 19th May, 1980 by Ahmedabad Cotton mills (Bagich Mills NO.2) on 19th May, 1980. The said termination order was challenged by the respondent before the Labour Court, Ahmedabad in T. Application No.203 of 1980. During the pendency of the T. Application the respondent workman was reinstated in service by the Mill Company on 19th February, 1983. Thereafter, the Mill was closed and petitioner has taken over the mills Company with effect from 8th November, 1985 under the provisions of Gujarat Closed Textile Undertaking (Nationalisation) Act, 1986. The Labour Court has decided the T. Application on 29th July, 1991 with the direction granting full back wages for the period 19th May, 1980 to 16th February, 1983. The said payments were not made to the respondent workman by the petitioner and Commissioner of Payment. Therefore, respondent workman had filed Recovery Application No.206 of 1993 wherein, the Labour Court, Ahmedabad has allowed the application filed by the respondent against the petitioners with the direction to pay Rs.37840/- with 6% interest from the date of application and with the cost and Rs. 400/- cost by order dated 31st December, 1994. the said order is under challenge by the present petitioners wherein, the rule has been issued returnable on 22nd March, 1995 meanwhile the operation of the order is stayed by order dated 2nd May, 1995.

Learned Advocate Mrs.Dawawala appearing on behalf of the petitioner has raised contention that the Labour Court has committed gross error in not appreciating the facts which are undisputed between the parties that liability of back wages pertaining to pre-nationalisation period in view of the express provision in the Nationalisation Act. The Labour Court has also not appreciated that such back wages are liable to be recovered from erstwhile management who was actually the owner of Mill Company prior to its nationalisation. She further submitted that the petitioner No.2 came to be vested with the ownership, title and interest of all the assets of the petitioner No.1 only from with effect from 8th November, 1985 by virtue of Nationalisation Act and therefore, considering the provisions of Section 5 of the Nationalisation Act. Every liability of the owner of the petitioner No.1 in respect of any period prior to the appointed date 8th November,1985. In the instant case, shall be the liability of such owner and shall be enforceable against him and not against the State Government or the petitioner No.2.

The Learned Advocate Mr.Clerk has pointed out that Commissioner for Payments has rejected the claim of respondent as time barred and therefore, the Labour Court has rightly granted the recovery against the petitioners.

I have heard both the Learned Advocates. I have perused the order passed by the Labour Court in Recovery Application, the Labour Court in paragraph 7 of the order and the Labour Court has also not considered properly Section 5 and 11 of the Nationalisation Act. It is undisputed fact that claim of respondent is relating to prior period of Nationalisation and therefore, any amount dues in favour of respondent prior to appointed day 8th November, 1985 that considering the provisions of Section 5 and 11 read together of the Nationalisation Act, the petitioners are not liable to pay any amount which relating to the prior period of 8th November, 1985. In the present case the back wages granted by the Labour Court for the period 19-05-1980 to 16-02-1983 which relating to prior period of 8th November, 1985. The Labour Court has committed error apparently on the ground that respondent has been reinstated in service and after Nationalisation the service was remain continued with the petitioners and therefore, petitioner is liable to pay the back wages because, the petitioner is liable to pay the retirement dues of the employee whose service are taken up by petitioner and employed by the Corporation. But, this is merely a misconception in the mind of the Labour Court because, the back wages in presence case is relating to the period prior appointed day 8th November, 1985. Therefore, the Labour Court is not right in directing to the petitioners to pay the amount of the back wages period 19th May, 1980 to 16th February, 1983 to the petitioners because, petitioners are not liable to pay any claim of respondent relating to the back wages for the period 19th May, 1980 to 16th February, 1983 prior to the date of 8th November, 1985. Therefore, the direction which has been issued by the Labour Court in present order dated 31st December, 1994 against the petitioners are required to be quashed and set aside and same is hereby quashed and set aside. However, the claim of back wages for period 19th May, 1982 to 16th February, 1983 of the respondent on the basis of the order passed by the Labour Court in T. Application, the respondent is entitled to recover the same from the Commissioner of Payments or by any other appropriate foram against the erstwhile management or same can be recovered by the respondent while approaching the proper and appropriate foram available to the respondent under Section 18(7) of the Nationalisation Act. Therefore, in view of the said

observation the amount of back wages can be recovered by the respondent availing alternative foram and in view of these facts the direction issued by the Labour Court, Ahmedabad in Recovery Application No. 206 of 1993 dated 31st December, 1994 against the petitioners are required to be quashed and set aside and same is hereby quashed and set aside. The present petition is allowed. Rule made absolute. No order as to costs.

Date : 27-04-2000. (H.K.RATHOD,J)

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